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LEGEND:

X =

Brand =

Engine Company =

State =

Agency =

Committee =

Region =

\$n =

Dear :

This replies to a letter ruling request dated April 15, 2010, submitted on X's behalf by its authorized representative, requesting rulings under § 4051 of the Internal Revenue Code.

According to the information submitted, X manufactures light, medium, and heavy duty trucks and tractors through several of its divisions, including Brand. X delivers its products and services worldwide through an extensive dealer network. X, through Brand, will engage in sales of trucks and tractors that will take into account certain subsidies offered by State for the use of liquefied natural gas (LNG) engines as described below. Brand currently has a contract with Engine Company to provide it with diesel truck and tractor engines for installation into Brand's trucks and tractors. Brand will obtain the LNG conversion engines from Engine Company as well, through the same procedures already established for the diesel engines.

Engine Company researches, develops and markets high performance, low emission engine and fuel injection systems that use alternative fuels, such as LNG, both directly and through its partially and wholly owned subsidiaries. State enacted legislation that allowed State to fund certain programs to reduce air pollution from motor vehicles. Some of these funds are allocated to a regional Agency that serves as the air pollution control agency for Region. Agency engages in grant programs to assist end users of trucks and tractors in replacing diesel trucks and tractors with ones powered by alternative fuel. State law established Committee to determine which projects should be funded through Agency. Through this process, Agency entered into an agreement with Engine Company, through its subsidiary, to provide for LNG engine "buy downs" out of Agency funds. The "buy down" will provide Engine Company with an \$n per engine incentive which will reduce the cost of installing an LNG system on a truck or tractor engine.

Engine Company collects participation agreements from prospective purchasers of LNG system trucks and tractors and coordinates the applications with Agency. If Agency accepts the participation agreement, the \$n incentive is passed through to the person who ultimately purchases the truck or tractor from the Brand dealer (hereinafter the "program participant"). The obligations of the program participant and the consequences for breach of any obligation are described in the participation agreements. Specifically, the participation agreements contain a geographic restriction requiring that at least 75% of annual mileage or engine hours be used within Agency's jurisdiction for at least 3 years. The participation agreements also provide for various payments ranging from 60% to 100% of \$n that the program participant must pay to Agency if the program participant does not meet the obligations contained in the agreement. If the trucks or tractors are subsequently leased, the lessee must agree to the terms of the participation agreement.

The flow of funds from Agency or Committee through Engine Company and Brand is as follows. The program participant applies for the "buy down" through Engine Company, which submits the application to Agency. Once Agency approves the application, Agency releases funds to Engine Company to "buy down" the cost of an LNG engine conversion. Engine Company passes this "buy down" along to Brand by selling the LNG conversion to Brand at a \$n discount. This ultimately lowers the price at

which Brand sells the converted truck or tractor to the Brand dealer. After the Brand dealer's mark-up, the dealer sells the truck or tractor to the program participant for a lower price than the program participant would have paid without the "buy down."

The engine conversion work will be performed on-site at Brand's manufacturing facilities. The price for the conversions will be computed after Engine Company rebates and the Agency "buy down." All of the trucks and tractors will be custom ordered and destined for use within Agency's jurisdiction.

For transactions involving "buy downs," the Brand dealer will not provide Brand with exemption certificates described in § 145.4052-1(a)(6) of the Temporary Excise Tax Regulations Under the Highway Revenue Act of 1982 (Pub. L. 97-424) and § 48.4082-1(a) of the Manufacturers and Retailers Excise Tax.

Section 4051 generally imposes on the first retail sale of certain articles, including automobile truck chassis, truck bodies (including in each case parts or accessories sold on or in connection therewith or with the sale thereof), truck trailer and semitrailer chassis, truck trailer and semitrailer bodies, and tractors, a tax of 12 percent of the amount for which the article is so sold.

Section 4052(a)(1) provides that the term "first retail sale" means the first sale, for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation.

Section 4052(b) provides that in the case of any article sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax under subchapter C of chapter 31 shall be computed on the price for which similar articles are sold at retail in the ordinary course of trade, as determined by the Secretary.

Section 145.4052-1(a) generally provides that the term "first retail sale" means a taxable sale. A sale is taxable if it is not exempt under § 4221, the item sold was for resale or for leasing in a long-term lease pursuant to § 48.4052-1, or there has been a prior taxable sale under certain circumstances.

Section 145.4052-1(a)(6) provides that a certificate signed by the purchaser may be accepted by a seller in support of a nontaxable sale to the purchaser.

Section 48.4052-1(a) provides tax is not imposed by § 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith and that is in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052-1(a)(6), except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

Section 145.4052-1(d)(1) provides that the price for which an article is sold includes the total consideration paid for the article whether that consideration is paid in money, services, or other forms. Similar rules to § 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply.

Section 145.4052-1(d)(10) provides that for purposes of § 145.4051-1 and 145.4052-1, a sale is considered to be made under circumstances otherwise than at "arm's length" if (i) one of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or (ii) the sale is made pursuant to special arrangements between a seller and a purchaser.

You have requested a determination that the first retail sale of Brand trucks and tractors occurs when the Brand dealer purchases the trucks or tractors. You have also requested a determination that the tax base is determined after the "buy down" described above is taken into account.

The first issue is whether the first retail sale occurs when Brand sells the truck or tractor to the Brand dealer or when the Brand dealer sells the truck or tractor to the program participant. Under § 4052(a)(1), the "first retail sale" means the first sale for a purpose other than for resale or leasing in a long-term lease, after production, manufacture, or importation. In order for there to be a tax exempt sale due to an intended resale, the purchaser must provide the seller an exemption certificate similar to the certificate described in § 145.4052-1(a)(6). In this case, the dealer will not provide such an exemption certificate. Thus, we conclude that the first retail sale occurs when Brand sells the truck or tractor to the Brand dealer. See also, § 145.4052-1(e), Example 6.

The second issue is whether the tax base includes or excludes the amount of the "buy down." Section 4051 imposes a tax on the first retail sale of certain articles, including automobile truck chassis, automobile truck bodies, truck trailer and semitrailer chassis, truck trailer and semitrailer bodies, and tractors. In this case, the LNG engines subject to the "buy downs" are not taxable articles under § 4051; rather, they are components used in the manufacture of taxable articles.

Further, § 4052(b)(2) provides that if an article is sold (otherwise than through an arm's-length transaction) at less than the fair market price, the tax shall be computed on the price for which similar articles are sold at retail. Here, by virtue of a "buy down" provided to Engine Company by Agency, Brand purchases component LNG engines from Engine Company at a reduced cost and passes the savings on to the Brand dealer. The Brand dealer then sells the truck or tractor to the program participant at a lower cost than would otherwise be the case without the "buy down." The sale is at

arm's length under § 145.4052-1(d)(10) because Brand does not control the Brand dealer and the sale price is the result of a bona fide cost reduction Brand gets from Engine Company and Agency, rather than through a special arrangement between Brand and the Brand dealer. Accordingly, we conclude that the tax base is determined after the "buy down" is taken into account.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Stephanie Bland
Senior Technician Reviewer, Branch 7
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: